

**Farr Furnishings, Inc. d/b/a Interiors for Today and
Cynthia Cuellar.** Case 21-CA-34204

February 25, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS
SCHAUMBER AND WALSH

The General Counsel seeks default summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge filed by Cynthia Cuellar on September 28, 2000, the General Counsel issued a complaint on April 18, 2001 against Farr Furnishings, Inc. d/b/a Interiors for Today, the Respondent, alleging that it has violated Section 8(a)(1) of the Act by discharging Cuellar. Subsequently, on March 8, 2002, the Respondent entered into an informal settlement agreement (the agreement), which was approved by the Regional Director for Region 21 on April 23, 2002. Under the terms of the agreement, the Regional Director's approval constituted withdrawal of the complaint and the Respondent's answer to the complaint. The agreement required the Respondent to (1) make Cuellar whole by paying her backpay in the amount of \$28,448; (2) notify Cuellar in writing that the Respondent had removed all references to her termination from her personnel file and that the termination will not be used against her; and (3) post a notice to employees regarding the complaint allegations. The agreement also contains the following provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director may reissue the complaint previously filed in the instant case. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just issued complaint concerning the violation of the Act alleged therein. The Charged Party understands and agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it will not contest the validity of any such allegations, and the Board may enter findings of fact, conclusions of law, and an order on the allegations of the aforementioned complaint. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations

found as is customary to remedy such violations, including but not limited to the remedial provisions of this Settlement Agreement. The parties further agree that the Board's order may be entered thereon ex parte and that, upon application by the Board to the appropriate United States Court of Appeals for enforcement of the Board's order, judgment may be entered thereon ex parte and without opposition from the Charged Party.

On April 24, 2002, the compliance officer for Region 21 requested in writing that the Respondent comply with the agreement by posting the appropriate notice and paying Cuellar backpay. By letter dated April 30, 2002, the Respondent's attorney claimed that the Respondent's business was no longer operating and that he planned on mailing copies of the notice to employees.

By letter dated May 13, 2002, the compliance officer again requested the Respondent to comply with the agreement, and informed the Respondent that it had 14 days to comply, or the Regional Office would initiate further proceedings in accordance with the terms of the agreement.

On May 15, 2002, the Respondent's attorney sent copies of two separate correspondences to the Regional Office. One correspondence was a copy of the letter that the Respondent sent to Cuellar, which stated that her personnel file contained no references to her discharge and that the discharge would not be used against her. In the second correspondence, the Respondent's attorney included a signed notice, provided employees' names and addresses, and assured the Region that there were no documents in Cuellar's personnel file relating to her discharge and that the discharge would not be used against her.¹ He asserted, however, that the Respondent did not have the funds to pay Cuellar any backpay. On July 26, 2002, the Compliance Officer confirmed in writing that the Respondent would not comply further with the agreement.

By letter dated August 8, 2002, the Regional Director notified the Respondent that it was in default of the agreement and had 14 days to cure its default. The letter advised the Respondent that failure to comply with the agreement would result in reissuance of the complaint and the filing of a Motion for Summary Judgment. Because the Respondent did not thereafter comply fully with the agreement, the Regional Director reissued the complaint on September 11, 2002.²

¹ In May and July 2002, the compliance officer mailed copies of the notice to the employees.

² The Postal Service returned the complaint to the Region as "unclaimed." The returned envelope noted the Respondent's new forwarding address. On October 16, 2002, the Region served the complaint on the new forwarding address.

On October 22, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On October 25, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent has failed to comply with the settlement agreement by refusing to pay Cuellar the agreed-upon backpay amount. Consequently, pursuant to the provisions of the settlement agreement set forth above, we find that the allegations of the complaint are true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with a facility located at 27326 Jefferson Avenue, Suite 12, Temecula, California (the facility), has been engaged in the retail sale of furniture.

The Respondent, in the course and conduct of its business operations described above, annually derives gross revenues in excess of \$500,000, and purchases and receives at the facility goods valued in excess of \$50,000 from other enterprises located within the State of California, each of which other enterprises had received these goods directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Jeff Farr held the position of Respondent's corporate secretary/treasurer and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about March 27, 2000, employee Cynthia Cuellar concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees by complaining about employees' pay rates and newly introduced job descriptions and benefit programs, and requesting a meeting to discuss these issues.

On about March 29, 2000, employee Cuellar concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees by complaining about employees' pay rates and newly introduced job descriptions and benefit programs.

On about March 29, 2000, the Respondent discharged employee Cuellar. The Respondent discharged Cuellar because she engaged in the conduct described above and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by discharging Cynthia Cuellar, we shall order the Respondent to make her whole for loss of earnings and other benefits suffered as a result of her unlawful discharge by paying her backpay in the amount of \$28,448, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁴ The Respondent shall also be required to expunge from its files any and all references to Cuellar's unlawful discharge, and to notify Cuellar in writing that this has been done and that her discharge will not be used against her in any way.⁵

⁴ As noted above, the settlement agreement provides that in the event of noncompliance, the Board may "issue an order providing for a full remedy for the violations found as is customary to remedy such violations, including but not limited to the remedial provisions of this Settlement agreement." Such a "full remedy" ordinarily would include an order requiring the Respondent to offer reinstatement to Cuellar. The settlement agreement, however, did not contain a reinstatement provision. Further, the General Counsel's Motion for Summary Judgment does not request a reinstatement order as part of the remedy he seeks, and the Respondent has apparently ceased operations. In these circumstances, we limit our affirmative remedy to the provisions set forth in the settlement agreement and the General Counsel's requested remedy in his Motion for Summary Judgment. See *Auto West Collision*, 327 NLRB No. 37 (1998) (not reported in Board volumes).

⁵ The General Counsel's motion indicates that the Respondent may have partially complied with provisions of the settlement agreement discussed above. Accordingly, the Respondent shall be required to comply with our Order only to the extent it has not already done so.

As noted above, the Respondent's attorney has informed the Region that the Respondent's business was no longer operating. Further, the

³ *SAE Young Westmont-Chicago, LLC*, 333 NLRB No. 59 (2001) (not reported in Board volumes).

ORDER

The National Labor Relations Board orders that the Respondent, Farr Furnishings, Inc., d/b/a Interiors for Today, Temecula, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging its employees because they engage in protected, concerted activity within the meaning of Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Cynthia Cuellar whole for loss of earnings and other benefits suffered as a result of her unlawful discharge by paying her backpay in the amount of \$28,448, plus interest, as prescribed in the remedy section of this decision.

(b) Within 14 days from the date of this Order, remove from its files any references to Cuellar's unlawful discharge, and, within 3 days thereafter, notify Cuellar in writing that this has been done and that the unlawful discharge will not be used against her in any way.

(c) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"⁶ to all current and former employees employed by the Respondent at any time since March 29, 2000.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

MAILED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge our employees because they engage in protected, concerted activity within the meaning of Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Cynthia Cuellar whole for loss of earnings and other benefits suffered as a result of her unlawful discharge by paying her backpay in the amount of \$28,448, plus interest.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any references to Cuellar's unlawful discharge, and, within 3 days thereafter, WE WILL notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

FARR FURNISHINGS INC. D/B/A INTERIORS FOR TODAY

General Counsel's motion requests that the Notice to Employees be mailed, rather than posted. In these circumstances, we shall provide for mailing of the notice. See, e.g., *Industrial Experimental & Mfg. Co.*, 332 NLRB No. 76, slip op. at 2 fn. 3 (2000) (not reported in Board volumes).

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."